

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VIRGIN RECORDS AMERICA INC.,	§	
<i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-04-4718
	§	
MARIA GONZALEZ,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER ENTERING DEFAULT

Plaintiffs have filed a motion for sanctions and default judgment against defendant Maria Gonzalez for her failure to respond to discovery. Federal courts may sanction parties and their attorneys for refusing to obey discovery orders and make mandatory disclosures (Rule 37(b)–(c)). The sanction imposed must be “the least severe sanction adequate to achieve the purpose of the rule under which it was imposed.” *Chambers*, 501 U.S. at 44; *Scaife v. Associated Air Ctr. Inc.*, 100 F.3d 406, 411 (5th Cir. 1996). In this case, Gonzalez refused to make any response to discovery requests despite two hearings, a court order, and a warning from the court that a failure to comply could lead to default. Given the warning, the clear record of noncompliance, and the intractable nature of the compliance, the motion to strike defendant’s answer and enter default is granted. No lesser sanction would respond to the failure to comply with discovery obligations and with court orders.

Plaintiffs have submitted an affidavit supporting their request for statutory damages for infringed works under the Copyright Act, 17 U.S.C. § 504(c)(1). Gonzalez must pay damages to plaintiffs for infringement of plaintiffs' copyrights in the following sound recordings, which were in Exhibit A to the Complaint, in the sum of \$5,250.00:

- "How Does it Feel," on album "Voodoo," by artist "D'Angelo" (SR# 280-480);
- "Make it Last Forever," on album "Make it Last Forever," by artist "Keith Sweat" (SR# 86-761);
- "Bring the Pain," on album "Tical 2000: Judgment Day," by artist "Method Man" (SR# 246-145);
- "Don't Change," on album "Juslisen," by artist "Musiq" (SR# 308-859);
- "Goodbye," on album "Songs in A Minor," by artist "Alicia Keys" (SR# 299-410);
- "Truly Madly Deeply," on album "Savage Garden," by artist "Savage Garden" (SR# 299-097); and
- "Grindin'," on album "Lord Willin'," by artist "Clipse" (SR# 321-673).

Plaintiffs also seek injunctive relief. Gonzalez is enjoined from directly or indirectly infringing plaintiffs' rights under federal or state law in the following copyrighted sound recordings:

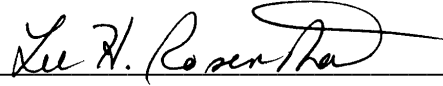
- "How Does it Feel," on album "Voodoo," by artist "D'Angelo" (SR# 280-480);

- “Make it Last Forever,” on album “Make it Last Forever,” by artist “Keith Sweat” (SR# 86-761);
- “Bring the Pain,” on album “Tical 2000: Judgment Day,” by artist “Method Man” (SR# 246-145);
- “Don’t Change,” on album “Juslisen,” by artist “Musiq” (SR# 308-859);
- “Goodbye,” on album “Songs in A Minor,” by artist “Alicia Keys” (SR# 299-410);
- “Truly Madly Deeply,” on album “Savage Garden,” by artist “Savage Garden” (SR# 299-097); and
- “Grindin,” on album “Lord Willin,” by artist “Clipse” (SR# 321-673).

Gonzalez is enjoined from any infringing activities including without limitation by using the Internet or any online media distribution system to reproduce (i.e., download) any of these recordings, to distribute (i.e., upload) any of these recordings, or to make any of these recordings available for distribution to the public, except pursuant to a lawful license or with the express authority of plaintiffs. Gonzalez must destroy all copies of these recordings she has downloaded onto any computer hard drive or server without plaintiffs’ authorization and destroy all copies of those downloaded recordings transferred onto any physical medium or device in her possession, custody, or control.

Gonzalez must also pay costs of court in the amount of \$335.00.

SIGNED on November 15, 2005, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Lee H. Rosenthal
United States District Judge